



Tobacco Control Laws

That Affect Retail Businesses 2008

An Important Message

*from the California Department of Public Health
and the Attorney General's Office*

Dear Business Owner:

This brochure has been updated and contains basic information on several state tobacco control laws that affect retail businesses. Words in **bold type** are defined in the glossary.

Information is also available on the Internet at

■ www.leginfo.ca.gov/calaw.html

■ caag.state.ca.us/tobacco

■ www.boe.ca.gov

Your local health department can advise you of local tobacco control laws that affect your business.

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Stop Tobacco Access to Kids
ENFORCEMENT ACT



***At a Glance—* How to Comply with the Laws**

When you get a tobacco retail license, you must

- **DISPLAY** your license so your customers can see it.
- **KEEP** complete, readable purchase invoices for cigarettes and tobacco products for four years.
- **KEEP** purchase invoices for cigarette and tobacco products in the same store where the purchased items are being sold for at least one year after the date of purchase.
- **HAVE** your cigarette and tobacco products purchase invoices available for review by California State Board of Equalization (BOE) staff or law enforcement officers.

How to prevent tobacco sales to minors

- **MAKE SURE** your employees always ask customers who look younger than 27 years old for IDs and check the birthdates carefully.
- **ACCEPT** only valid government-issued photo IDs (driver license, state ID, passport, military ID).

When you train employees to prevent tobacco sales to minors

- **TRAIN** all your employees who sell tobacco products so that they understand all the laws and company rules about selling tobacco products. Also include training on the health-related reasons to not sell tobacco products to minors.
- **TEACH** employees how to check for age. Have them practice how to figure out someone's age from an ID. Also teach them how to act and what to say when they have to refuse to sell to someone.
- **PROVIDE** more training if any employee breaks the law or store rules.
- **GIVE** employees written copies of the tobacco laws and store rules. Have them sign the copies to show that they have read and understood them.

How can you help employees comply with the law?

- **POST** the required *Stop Tobacco Access to Kids Enforcement (STAKE) Act* age-of-sale warning signs. Also post signs to remind employees and inform customers that anyone who looks under age 27 will be asked for ID.



- KEEP aids at the checkout or register to help employees figure out age (calendars, register prompts, electronic ID scanning system, etc.).

Be sure you are complying with the laws!

- NO tobacco products or **tobacco paraphernalia** sold to anyone under age 18
- NO **self-service display** of tobacco products or paraphernalia (with limited exceptions for cigars in tobacco-only stores)
- NO sales of cigarette packs with less than 20 cigarettes or single cigarettes
- NO **tobacco samples** in your store (with limited exceptions)
- NO sales of **bidis** in businesses that allow minors
- NO tobacco vending machines where minors are allowed

License Requirements

✓ California Cigarette and Tobacco Products Licensing Act of 2003

Under the *Cigarette and Tobacco Products Licensing Act of 2003*, businesses in California that sell cigarettes and other tobacco products to the public must have a California Cigarette and Tobacco Products License. This is true even if you have a seller's permit, or other permits or licenses issued by the BOE or a local government.

WHO is required to have a license?

Starting June 30, 2004, sellers of cigarettes and other tobacco products in California must have a license to sell cigarettes or tobacco products to the public from a building or vending machine. You must have a separate license for each building or vending machine. Whenever you add a new location where you sell tobacco products, you must get a separate license for that location.

Note: If you operate your business from a catering truck, lunch wagon, or other movable vehicle or location, you do **not** qualify for a license and cannot sell cigarettes or tobacco products in California.

You must obtain a distributor's license if you buy cigarettes or tobacco products from an out-of-state seller who is not licensed under this Act. You must get a wholesaler's license if you buy tax-paid cigarettes or tobacco products for resale. Either license costs \$1000 per year for each location where you sell or distribute tobacco products.



HOW much does a state tobacco license cost?

There is a one-time fee of \$100 for *each* license for *each* building or vending machine where you sell cigarettes or tobacco products to the public. A license is good for one year and must be renewed every year. You do not have to pay a fee to renew the license. However, if you fail to renew your license before its expiration date, there is an additional \$100 fee to reinstate your license.

HOW do I get a state tobacco license?

Complete and submit an *Application for Retailer's Cigarette and Tobacco Products License* (form BOE-400-LR). To get the application, call the Board of Equalization (BOE) Information Center at (800) 400-7115. You can also download the application from the BOE website at www.boe.ca.gov/sptaxprog/sptaxforms.htm

Note: In addition to the state licensing requirement for retail tobacco sales, many city and county governments have additional licensing requirements. Check with your local business license department for more information.

✓ As a license holder, you must

- **DISPLAY** your license where the public can easily read it. Failure to do so is an automatic fine of \$500. Your license may also be taken away temporarily or permanently.
- **KEEP** complete and readable purchase invoices for cigarettes and tobacco products for four years. Failure to do so may result in a fine of up to \$5,000 and/or imprisonment for up to one year in a county jail. Keep these invoices at each licensed location where you are selling the tobacco products for at least one year after the purchase date.
- **LET** BOE staff or law enforcement officers see your cigarette and tobacco products purchase invoices when they ask you for them. The law also allows BOE staff and law enforcement officers to take any untaxed cigarettes and tobacco products, including cigarettes without stamps or with counterfeit tax stamps. If you refuse to allow an inspection, you are breaking the law and may be fined.

Purchase Invoice Requirements

The invoices you get from wholesalers and distributors licensed under the *Cigarette and Tobacco Products Licensing Act of 2003* must have the following information:



- The name of the wholesaler or distributor who sold you the cigarettes or tobacco products
- The address, telephone number, and license number of the wholesaler or distributor
- The amount of excise tax paid to the BOE. An invoice must say that all California cigarette and tobacco product taxes are included in the total amount of this invoice.
- Retailer's name, address, and license number
- An itemized list of the products sold

Illegal Purchases

It is against the law for you to buy cigarettes or tobacco products from a seller who is not licensed under the *California Cigarette and Tobacco Products Licensing Act of 2003*. If you make an illegal purchase, your license may be taken away temporarily or permanently. You may also be fined and/or sent to prison.

Note: A list of California-licensed distributors and wholesalers is on the Board of Equalization website at www.boe.ca.gov/pdf/cigdistrib-wholsr.pdf

Laws about Selling to Minors

✓ Selling tobacco to anyone under the age of 18 is against the law. Anyone younger than 18 years old is a minor.

Two California laws prohibit selling tobacco to minors: *Penal Code Section 308* and the *Stop Tobacco Access to Kids Enforcement (STAKE) Act*, *Business and Professions Code Section 22950–22963*.

Penal Code Section 308

- It is a crime to sell, give, or in any way supply tobacco products and paraphernalia to minors.
- Signs with the “1-800-5 ASK-4-ID” phone number must be posted at each cash register.

WHAT are the penalties?

- Storeowners and/or clerks who break the law may be charged with a misdemeanor or may be fined: \$200 for the first violation, \$500 for the second violation, and \$1,000 for the third violation.



WHO enforces this law?

Local law enforcement agencies

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html

Penal Code Section 308

STAKE Act

- Outlaws selling or giving tobacco products to minors.
- Sellers must check the ID of anyone who looks younger than age 18.
- Signs with the “1-800-5 ASK-4-ID” phone number must be posted at each cash register.
- The state health department, and any state agency or local enforcement agency, may use **youth decoys** in on-site inspections to determine if retailers are selling illegally to youth.
- Youth decoys involved in law enforcement inspections will show a legal ID with their real age if asked, but they do not have to state their real age.
- There are three ways your business can be inspected: at random, in response to public complaints, or if it has been found in violation at previous inspections.
- Illegal sales of tobacco to minors made over the phone, through the mail, or via the Internet may also be investigated.

WHAT are the penalties?

Penalties under the **STAKE Act** are enforced against store owners—not employees.

- \$400–\$600 for the first violation
- \$900–\$1,000 for the second violation within a five-year period
- \$1,200–\$1,800 for a third violation within a five-year period
- \$3,000–\$4,000 for a fourth violation within a five-year period
- \$5,000–\$6,000 for a fifth violation and each additional violation within a five-year period

WHO enforces this law?

The Food and Drug Branch of the California Department of Public Health is the primary enforcing agency, but any state agency or local law enforcement agency may also enforce the STAKE Act.



WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html

Business and Professions Code Section 22950–22963

To find out about additional local tobacco control laws where you live, contact your local law enforcement agency or local health department's tobacco control program.

For free signs and educational materials about the *STAKE Act*, call the *STAKE Act* hotline at (800) 527-5443.

An important note about signage

The *We Card* sign was created and is distributed by the Coalition for Responsible Tobacco Retailing, a group of tobacco retailers, wholesalers, and manufacturers funded by the tobacco industry. This sign does **not** meet the requirements for signage under the *STAKE Act*.

Laws about Self-Service Displays

✓ *Customers may not help themselves to cigarettes and other tobacco products and paraphernalia.*

As of January 1, 2005, the **self-service display of tobacco products is against the law**. Tobacco products include cigarettes, chewing tobacco, dipping tobacco, snuff, cigars, bidis, pipe tobacco, roll your own tobacco, and any other product containing tobacco. **The self-service display of tobacco paraphernalia is also against the law.**

WHAT is tobacco paraphernalia?

Tobacco paraphernalia includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

ARE there any exceptions?

The law contains certain exceptions that apply only to “**tobacco stores**”—stores that generate more than 60% of gross annual revenue from the sale of tobacco products and paraphernalia—that prohibit unaccompanied minors, and that do not sell alcohol or food for consumption on the premises. Tobacco stores may have self-service displays of pipe tobacco, or cigars in packages of six or more in the original wrapping.

WHAT are self-service displays?

A “self-service display” is a display of tobacco products and tobacco paraphernalia that allows access to the product by customers without help from a clerk.



DOES the law apply to cigars and smokeless tobacco?

Yes. The law applies to all products containing tobacco leaf.

WHAT do I need to do to comply with the law?

Tobacco products and tobacco paraphernalia stock must be located in a place where the public cannot get to them without a clerk's assistance.

WHAT are the penalties?

If you break the law, you may be fined the following amounts:

- \$400–\$600 for the first violation
- \$900–\$1,000 for the second violation within a five-year period
- \$1,200–\$1,800 for a third violation within a five-year period
- \$3,000–\$4,000 for a fourth violation within a five-year period
- \$5,000–\$6,000 for a fifth violation and each additional violation within a five-year period

WHO enforces the law?

The Attorney General, a city attorney, a county counsel, or a district attorney

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html *California Business and Professions Code Section 22962*

Requirements about Signs and Storefront Ads

✓ You must post a STAKE Act age-of-sale warning sign at each cash register.

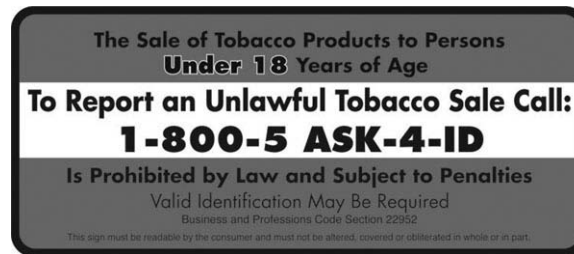
Every business that sells tobacco must post a *STAKE Act* age-of-sale warning sign where tobacco sales take place, such as near a cash register. It is against the law not to post this sign.

- The sign must have all of the following words:

The Sale of Tobacco Products to Persons Under 18 Years of Age is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale, Call 1-800-5 ASK-4-ID. *Business and Professions Code Section 22952.*



- The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (at least 3.66 inches by 8.5 inches), and the lettering must use specified font sizes.
- The sign must have bold letters and a contrasting color background.
- The sign must be “likely to be read by a customer,” and all of the required information must be readable and not altered, covered, or erased in whole or in part.



WHERE can I get free signs?

You can get free signs by calling the Tobacco Education Clearinghouse of California at (800) 258-9090 x103 or 230. You can also get them at your local health department tobacco control program.

Note: The *We Card* sign provided by the tobacco industry does not meet the state law requirements.

WHAT are the penalties?

Fines and other penalties increased in 2008. If you do not post signs at each cash register, you may be fined the following amounts under the STAKE Act:

- \$200 for the first violation
- \$500 for each additional violation

(Note: there are alternative penalties available under Penal Code Section 308.)

WHO enforces this law?

The Food and Drug Branch of the California Department of Public Health is the primary enforcing agency, but any state agency and local law enforcement agency may also enforce this law.

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html

Business and Professions Code Section 22952

STAKE Act regulations can be found in the California Code of Regulations, Title 17, Section 6902; and Penal Code Section 308(c) at ccr.oal.ca.gov



✓ *Outdoor and storefront signs advertising tobacco may not be more than 14 square feet.*

Under the Tobacco Master Settlement Agreement between California and the major tobacco companies, signs advertising cigarettes and smokeless tobacco that are displayed outside a tobacco retail store, or on a window facing outward, may not be more than 14 square feet. “**Mosaics**” (ads placed next to each other) are also not allowed if the display is larger than 14 square feet.

WHO enforces the Tobacco Master Settlement Agreement?

The California Attorney General

WHERE can I learn more?

Information about the Tobacco Master Settlement Agreement is available at caag.state.ca.us/tobacco or by calling (916) 565-6486.

✓ *Storefront advertising restrictions for alcohol retailers*

Every business with an off-sale premises license to sell alcoholic beverages has restrictions on storefront advertising. No more than one-third of the square footage of windows and glass doors of an alcohol retailer may have advertising signs of any sort, including tobacco.

WHAT are the penalties?

If you break the law, you may be fined up to \$1,000 or may be sentenced to not more than six months imprisonment.

WHO enforces this law?

The Department of Alcoholic Beverage Control and local law enforcement agencies

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html *Business and Professions Code Sections 25612.5(c)(7) and 25617*

Local advertising restrictions can be more strict. Contact your local law enforcement agency or health department to find out about any local storefront advertising restrictions.



Laws about Tobacco Packaging

✓ *Sales of individual cigarettes are prohibited.*

- It is against the law to sell single cigarettes. Cigarettes must be sold in the sealed and properly labeled packaging of the manufacturer or importer, which meets federal labeling requirements.
- Cigarettes may not be manufactured for sale, distributed, sold, or offered for sale in packages of fewer than 20 cigarettes.
- Roll-your-own tobacco may not be manufactured for sale, distributed, sold, or offered for sale in a package containing less than 0.60 ounces of tobacco.

WHAT are the penalties?

Any person, firm, corporation, or business that breaks this law may be fined the following amounts:

- \$200 for the first violation
- \$500 for the second violation
- \$1,000 for each subsequent violation

WHO enforces the law?

Local law enforcement agencies may enforce this law. The Attorney General, a district attorney, a county counsel, or a city attorney may bring a civil action.

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html

Penal Code Sections 308.2 and 308.3

Restrictions on the Sale of Bidis

✓ *Selling Bidis is against the law at most retail locations.*

The sale, offer for sale, distribution, or importation of “**bidis**” (also known as “beedies”) is against the law except where minors (persons under the age of 18) are not allowed.

WHAT are “bidis”?

Bidis are handrolled cigarettes containing tobacco wrapped in temburi or tendu leaf that are imported mainly from India and some Southeast Asian countries. They come in a variety of candy-like flavors and often are sold in packs of fewer than 20.



WHAT are the penalties?

You may be fined up to \$2,000 every time you break the law.

WHO enforces the law?

Local law enforcement agencies may enforce this law. The Attorney General, a district attorney, a county counsel, or a city attorney may bring a civil action.

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html

Penal Code Section 308.1

Restrictions on Tobacco Samples

✓ *The distribution of free or low-cost tobacco products or coupons is against the law.*

It is illegal to give out free or low-cost cigarettes or smokeless tobacco—or coupon offers, rebate offers, gift certificates, or other similar offers for these products—on private property that is open to the general public (such as retail businesses) or on public property (such as state- or county-owned or operated fairgrounds).

This law does not apply to the following:

- Places where minors are not allowed, such as bars or taverns
- Distribution of tobacco products, coupons, coupon offers, or rebate offers in connection with the sale of another item, for example, tobacco products or cigarette lighters
- A separate distribution area on property open to the general public if minors are denied access to the area by a police officer or licensed security guard. The area must be enclosed to prevent anyone outside the area from seeing the distribution unless they take unreasonable efforts to see inside the area.

WHAT are the penalties?

If you break the law, you may be fined the following amounts:

- \$200 for the first item
- \$500 for the second item
- \$1,000 for each item after that



WHO enforces this law?

The Attorney General or a local prosecutor

WHERE can I find a copy of the law?

www.leginfo.ca.gov/calaw.html *California Health and Safety Code Section 118950*

Glossary

- **bidis**: imported, hand rolled cigarettes containing tobacco wrapped in temburi or tendu leaf
- **California Cigarette and Tobacco Products Licensing Act of 2003**: state law that requires California businesses to have a license to sell cigarettes and other tobacco products to the public
- **mosaics or mosaic ads**: ads placed next to each other on windows, doors, or walls
- **Penal Code Section 308**: a state law that makes it a crime to sell or give tobacco products or paraphernalia to minors
- **self-service display**: a display of tobacco products and tobacco paraphernalia that the public can access without help from a clerk
- **STAKE Act**: the Stop Tobacco Access to Kids Enforcement Act is a state law that outlaws selling or giving tobacco products or paraphernalia to minors.
- **tobacco paraphernalia**: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments designed for the smoking or ingestion of tobacco products
- **tobacco samples**: free or nearly free cigarettes or smokeless tobacco, or coupons, coupon offers, or rebate offers for these products
- **tobacco stores**: stores that make more than 60% of gross annual revenue from the sale of tobacco products and paraphernalia, that prohibit unaccompanied minors, and that do not sell alcohol or food for consumption on the premises
- **We Card**: a program of the Coalition for Responsible Tobacco Retailing that reminds retailers to check customer ID for tobacco purchases. *We Card* signs do **not** meet the requirements for signage under the STAKE Act and should **not** be used instead of STAKE Act signs.
- **youth decoys**: youth who participate in law enforcement inspections of tobacco retail stores



DISCLAIMER

This material has been prepared for informational purposes only, and it may or may not reflect the most current legal developments. The State of California Department of Public Health, California Tobacco Control Program and the Attorney General's office have provided this brochure as a guide to the current laws regulating tobacco sales and use in California (at the time of this printing). **THIS IS NOT LEGAL ADVICE.** The reader is advised that laws frequently change, and it is your responsibility to keep current with those legal requirements that affect the operation of your business or your personal conduct.



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